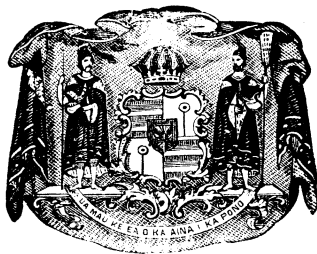


REIGN OF HIS MAJESTY KALAKAUA--FIFTEENTH YEAR.

REPORT
OF THE
AUDITOR-GENERAL
TO THE
HAWAIIAN LEGISLATURE,
SESSION OF 1888.

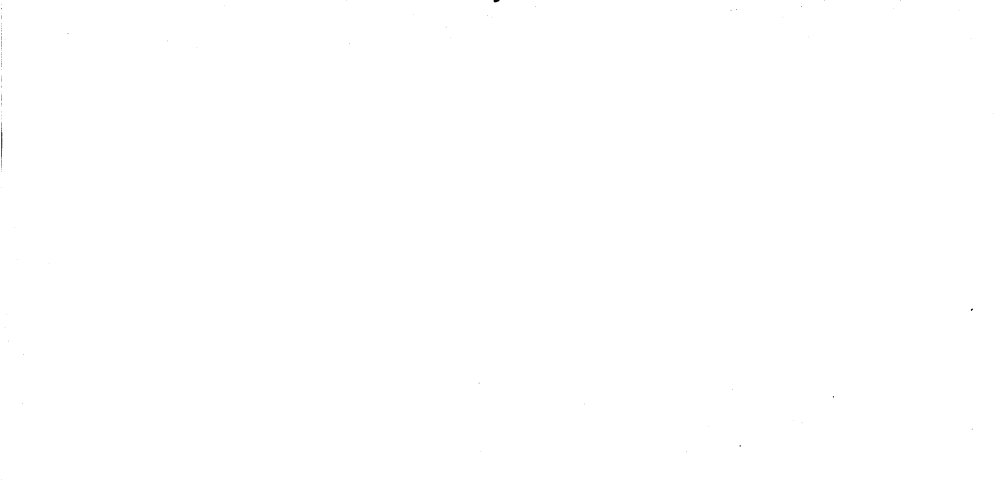


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ERRATA.—Page 6, last paragraph, third line, read “*condensed*,” instead of “*condemned*.”

Page 11, second paragraph, third line, read “*pay rolls*,” instead of “*pay roles*.”

Page 4, last line, read “*wording*,” instead of “*working*.”



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REPORT
OF THE
AUDITOR-GENERAL

TO THE
HAWAIIAN LEGISLATURE, SESSION OF 1888,
WITH APPENDIX.

OFFICE OF THE AUDITOR-GENERAL,
HONOLULU, May 28, 1888.

NOBLES AND REPRESENTATIVES:—According to Sections 25 and 26 of the Audit Act, I am instructed to make an annual report to your Honorable Assembly.

In complying with such provision, I will most respectfully state that as my principal object will be to illustrate how and why this Act fails to be carried out, and, as to do this will occupy considerable space, I shall not undertake to comment at any length on the transactions of the last period, or for those prior to my taking office, but will content myself with saying that for the time since elapsed the books of the Finance Department agree with the vouchers, statements, etc., filed in the Audit Office, and contain, to the best of my knowledge and belief, a full and true account of all receipts and expenditures during that period—a statement of which will, doubtless, accompany the report of His Excellency the Minister of Finance to the Legislature, consequently it does not require any further notice from me.

Feeling satisfied that the reports of the various heads of departments will contain full and ample particulars appertaining to each, I will confine my remarks principally to the workings of the Audit Act, as it has come under my notice during the last few months, as I am instructed to do therein.

My first duty upon taking office was to establish some system of recording the transactions of the office, and I decided that it would require at least one book. To avoid confusion, and also to lessen the chances of errors arising from having to enter up from vouchers as fast as presented, I called for duplicates—one to remain in the Audit Office, and from which I make up my record book, and the other filed in the department issuing the draft.

Although this necessitated considerable extra work, all who came under the law, and the public generally, promptly and in a right spirit accepted the requirement.

I feel justified in saying that the system only requires to be extended to cover some points, at present outside of the Auditor's jurisdiction, to make it perfect; but this extension would so increase the amount of work as to make it impossible for any one man to accomplish it during ordinary working hours, for even at present it requires a good deal of over-time labor to keep up with the work.

The system has received the approval of every business man under whose notice it has come, and I can afford to overlook the only opposition it has met with, although this came from a source entirely unexpected and uncalled for.

I here desire to acknowledge the valuable assistance

and information I have received from all the employees under the Government, more especially from the Chief Clerk of the Interior Office and all his staff, the Registrar of Public Accounts and his bookkeeper, without which aid my task would have been much more difficult. I also desire to recognize the courteous manner with which my efforts to improve the workings of the law have been met generally throughout this building.

But, to return to the consideration of the Audit Act, while I must acknowledge that I have been somewhat disappointed in the workings of this law, its defeat in all cases by no means arose from defects in the law itself, but rather as the result of a loose, and often reckless, solution in times past of any difficulty in observing a law which provided for a strict accounting of all receipts and expenditures on account of the revenue of the Kingdom, a strong factor being always present wanting the money first and the approval afterwards if it could be procured; and, if not, it made but little difference. In this way has the law been defeated, and the systems of receipts and expenditures have sprung up entirely at variance with it, although it is claimed that, in some instances, it was unavoidable, and no other system practicable.

Under such circumstances, and while many points of this law are still in dispute, and the Auditor's power but imperfectly defined or recognized, I have not thought it wise to do more than draw the attention of all concerned who came under the workings of the Audit Act, as to what was required of them—and, whether or not, they were obeying its requirements.

If I have failed at times to see that the law was carried out, I can scarcely plead ignorance as an excuse,

for if my interpretation of the Audit Act is a correct one, I would have but little to report, and no actions that have appeared irregular to me could possibly have occurred. Whether or not they were really so is a matter for your Honorable Body to decide, for I consider it the Auditor's duty to lay all such facts before you ; and I, for my part, am prepared to take any share of censure at your hands that I may possibly have earned in submitting to the ruling of His Excellency the Attorney-General, my legal adviser ; although, as such, why his opinion should not be respected is one of the incongruities that seem to surround the Audit Act and render it either inoperative or subservient ; and, as his opinion generally tended to deprive the Auditor of all power, it but endorses the remark made to me by one of His Majesty's Ministers that the Auditor could well be dispensed with, and all responsibility be assumed by them.

The Audit Act, as its title would indicate, and as its heading clearly explains, is an Act intended to "regulate the receipt, custody, and issue of the public moneys, and to provide for the audit of public accounts," and consequently entails certain duties embracing a wide scope of usefulness, and covering the entire revenue of the Kingdom, from the source thereof to the Treasury, and outward again in all its various wanderings, and I think it is of sufficient importance to receive the assistance of all who are interested in an honest and just handling of the public funds, and no law whether in force prior to the Audit Act, or enacted since, should be so construed as to hamper its workings for any cause whatever. Certainly there is nothing expressed, nor, I think, intended, in the whole working of the

Act, which would indicate to me that it was enacted for the express purpose of increasing any power in the hands of the Ministry ; but, on the contrary, if I am not in error, was intended, if not to curtail this power, to at the least so regulate and check it, as in some measure to prevent the abuse thereof.

If this is a correct view, it certainly seems inconsistent that His Excellency the Attorney-General should be the legal adviser of the Auditor-General in matters relating to his official calling, when it is a well-known fact that the main obstacles heretofore encountered in administering this law have generally arisen from actions of the Cabinet, or some member thereof, and if the present one differs in many respects from their predecessors, yet even they appear to look upon the law as a stumbling-block in their way, and, in a measure, have so treated it.

Under such circumstances, could His Excellency the Attorney-General be expected to do otherwise than uphold his colleagues, by always deciding against the Auditor-General, or when placed in the *perhaps* embarrassing position of deciding a point at issue between himself and the Auditor, and which, with his usual unbiassed judgment, he decided in his own favor, could anyone find fault ?

When a District Judge quoted Section 3, Chapter 51, of the Penal Code, as his authority for paying some of his receipts to the Governor of the Island where he resided instead of the Treasury, as the Audit Act directs, my legal adviser admitted that such a clause was still in force, but that the Audit Act, being a much later law, over-ride it, and therefore that the District Judge was wrong. But when I again ask for an opinion in

regard to the new Road Law, the same authority would dispense with the Auditor's duties, and rules that the new law over-rides the Audit Act.

In my judgment all such laws as conflict with the Audit Act, whether passed prior to or since its coming into operation, and render its workings so uncertain and inconsistent, and serve no other good or desirable end, should be repealed.

I point to the above clause in the Penal Code as an example which has always influenced and aided many in the country districts in effectually defeating the efforts of the Auditor in carrying out the law, and which I most respectfully suggest to the Legislature might well be repealed, while the case of the new Road Board Law, which was enacted during the special session of last year, I leave entirely in your hands.

Several sections of this Act, so far as I can ascertain, have remained inoperative from the first, either because they were impracticable or superfluous, as not affecting it for good or evil, or in some instances entirely ignored because it was easier to do so than to obey the law.

It is to be regretted that the law is so lengthy, and admits of such diversity of interpretation, while some of its best and vital points are lost sight of, because embodied in some otherwise unimportant and lengthy section.

I claim, however, that if quite a number of sections were entirely repealed, and many of the others condemned, there would still remain the fundamental basis of a sound Audit Act. I will go further, and say that if the law, just as it stands to-day, were duly obeyed, there would be little more to be desired ; but, unfortunately, when a law, either from expediency or choice, has been

for a long time evaded, or interpreted and carried out at the will of those in power, it is difficult to upset the work of years even if a better system is offered, which is not always the case, when, it seems to me, nothing better being advanced, it would be well to alter the law to cover the difficulty, and make it clear and intelligible.

Section 1 of the Act distinctly states that all persons collecting or receiving money on account of the Hawaiian Government or disbursing on account of the same shall become accountants, and shall perform all such duties and render such accounts as the Act prescribes, and as the Minister of Finance and the Auditor-General shall from time to time direct.

Section 2 most clearly says that all such accountants in Honolulu shall pay all the money collected into the Treasury weekly, and send a statement monthly to the Auditor.

Section 3 describes how and when accountants in the country districts shall dispose of their collections, and provides that they must also account to the Auditor, and in every case the money is to be paid into the Treasury direct and accounted for to the Auditor-General. No provision whatever is made which authorizes any accountant to pay over any revenue except as above.

I contend that the following out of these instructions would establish the only true principles for the disposal of all collections made on account of Hawaiian revenue, any departure from which opens the door to irregularity and perhaps fraud.

Now, let us see how this part of the law is carried out.

I will first take up the accountants in the country

districts, such as District and Police Justices and Tax Collectors, etc., who, with some notable exceptions, dispose of fines and costs or taxes in such a manner as often to make it impossible, for the time being, to know just what has become of the money, some having, perhaps, been paid over to the Treasury or the Governor or Sheriff, as the case may be, and the balance remaining still on hand and unaccounted for, awaiting their pleasure and convenience to make their statement, which, ten chances to one, will be unintelligible and must be sent back for correction, when another month or so will be likely to elapse before it is returned in order, causing endless extra work and a correspondence unlimited and often in two languages.

While it is not always an easy matter to distinguish those who may be careless or stupid from those who are delinquents evading the law, and trusting to their very mixed accounts and distance from headquarters to escape punishment, I have every reason, however, to expect a marked improvement from this quarter, partly owing to some changes made recently by the judiciary, to the order lately issued by the Chief Justice and the Attorney-General, and also from my own efforts to enforce a compliance with the law, and which is already resulting in the improved manner and regularity of making their returns.

It has been the custom, for how long I am unable to state, for the receipts, or portions thereof, of several bureaus of this Government to be used for running expenses, instead of being paid into the Treasury and drawn therefrom as the law provides.

I claim that all receipts disposed of as above or paid into the Interior Office, whether from Water Works,

prison labor, Post Office, Marshal's Office or Fish Market, are illegal, and whatever excuse there may be on the other islands for not strictly obeying the law, where transportation and distance from the Treasury must be taken into consideration, there is not the slightest excuse on this island why all public moneys should not be paid directly into the Treasury. This opinion has been quite suddenly indorsed by his Excellency the Minister of the Interior, who instructed the heads of all the above mentioned bureaus to deposit their collections there, which they are now doing.

Whether the arguments used by the Auditor in a recent interview were so pointed and irresistible as to convince his Excellency that the change was desirable and perhaps necessary, and was the sole cause of his making it, or if the convening of the Legislature at an early date had not also something to do with it I know not. The fact that the change has been accomplished is sufficient gratification to me, as most clearly indicating that the law was not being obeyed, and that his Excellency the Minister of the Interior knew it just as well as I did, and that under the reform movement it might be just as well to show a desire to amend such irregularities as not, instead of following up a system established before when it may have been quite desirable and a part of the programme to keep a good supply of coin in the Interior office.

Section 9 provides that every account, to be duly in order, must be sanctioned by a Minister, and in accordance with any existing law or regulation, and covered by any appropriation in force.

Section 10 makes the office incurring the expense

responsible for the computations, castings, rates of charges, etc.

Section 12 calls upon the Minister of Finance to furnish the Auditor with a copy of the Treasury cash book, showing the daily receipts and disbursements, etc.

Section 19. The last four lines of this Section read : "Provided, that no payments shall be made by the Minister of Finance or by his authority, except sums voted for the civil list, permanent settlements and salaries, unless the previous accounts have been previously countersigned by the Auditor-General.."

It seems to me that the seven sections herein quoted cover the main and vital points of the Audit Act in regard to the receipts and expenditures of public moneys, while the Auditor's duties are covered by other sections too numerous to recite here.

The law states who are accountants, how they shall dispose of the receipts, to whom and when, viz., by paying the same into the Treasury as may be directed, and also to notify the Auditor.

It also provides that any portion thereof can only be drawn therefrom by a voucher duly approved by a Minister and the Auditor-General, and drawn against an appropriation still in force and not all expended, and with a balance on hand sufficient to cover the charge.

Under no other circumstances is the Finance Minister authorized to pay out money except in cases provided for in Section 19.

I claim that if this is a clear and true reading of the law, and was strictly followed, we would hear much less about the "bad Audit Act," and the Auditor's duties would be plain and simple.

However, when the best points in the law are either ignored or overruled, and often, apparently so, for selfish ends, and the balance so interpreted that the Auditor's position is reduced to that of a figure-head—or at best a checking-clerk—it seems time that it either be changed to cover the obstacles that make it inoperative, or, if it is simply being defeated, then a ruling on its merits and from the highest authority in the Kingdom is very desirable.

It is claimed to be impossible to carry on the public works in the country districts unless money is furnished in advance with which to meet pay roles, etc., to be accounted for later on, when the accounts are for the first time presented to the Auditor for his approval.

Large sums are thus drawn and expended not only on account of all public works in the country districts, but also for the running expenses of the Leper Settlement and other branches of the Board of Health, and although the system is by no means new, I am not at all sure that any other has ever been tried which would conform to the law. I therefore feel doubtful about offering suggestions, further than to say that if it is an established certainty, arrived at from years of experience, that no system can be worked to comply with the law, without upsetting the entire machinery of the public works in the country districts, or perhaps inciting the lepers to revolt, both of which contingencies have been recited as possible, and that both laborers and lepers are in the position to dictate to this Government terms which cannot be met without breaking the law, then it would be better to include all such expenses among the exceptions contained in Section 19 of the Audit Act, and which do not require auditing ;

although I must confess that this method of overcoming the difficulty does not by any means meet with any hearty approval from me.

My main objection to this plan is that according to my interpretation of the Audit Act, all vouchers for expenditures should be audited before, and not after payment.

The laborer to-day, in nearly all countries, wields a power that is felt therein from end to end, and in his struggle with capital often succeeds not only in increasing his own wages per day, but also in decreasing the number of hours he shall labor each day; and is also able at times to dictate just when pay-day shall be; but as a rule this does not apply to governments, large corporations, contractors, etc., who reserve the right to select the pay-day to suit their own convenience.

Why the system should be different here I cannot say, for if the pay-day in the country could only be made monthly, I see no reason why all Road Supervisors, and Agents of the Board of Health and others, could not arrange to have their vouchers presented, in season for approval and then draw the money, to be forwarded to them.

Whether this is practicable or not, my main desire is to clearly explain that the present system of carrying on the above works by drawing the money first from the Treasury and accounting for it afterwards is not in accordance with the law.

I shall now proceed to call the attention of your honorable body to some few transactions that have appeared to me irregular, and which may serve to illustrate the workings of the Audit Act.

In January last three amounts of \$250 each were paid to A. S. Hartwell, Esq., as retainers in three law suits.

The first voucher reading, "Retainer only in the matter of proceedings vs. G. W. Macfarlane and Henry Macfarlane and F. Hayselden, re duties," and was made chargeable to "incidentals, civil and criminal expenses." The amount of this voucher has since been returned and refunded to the Treasury as a "Government realization."

The second voucher reads: "To retainer in re the Government title in the unassigned lands," and was also made chargeable as above, while the third voucher, which reads "This amount as retainer only in the matter of Government title in Honolulu harbor as against Dowsett, Kamehameha heirs and others, if any," was made chargeable to "Wharves contingent," and as these, as well as a few other payments of a like nature, did not appear to me to be proper charges to make, I addressed a letter on the subject to His Excellency the Attorney-General, whose reply (Appendix A) will explain the points raised by my letter and give His Excellency's legal opinion in reply; which opinion, if it be a true interpretation of the Audit Act, in so far as it bears on the question involved, clearly points out that it is the Auditor's duty to approve all measures which have already received any Minister's approval, and that there his responsibility ceases.

The correctness of this ruling, I, as Auditor-General, deem it my imperative duty to distinctly question, for under it any Minister of the Crown can not only expend every dollar in an appropriation under his charge, but also for any purpose "*not expressly forbidden by law*," and right here is where the Auditor should be able to

step in with full power to check expenditures under any such loose provisions, and although the above ruling is only another indication, to my mind, that the present Cabinet desire to assume entire responsibility themselves, at an early date, over all public revenue, it strikes me that the term "not expressly forbidden by law" is a trifle too broad and lax, and might be used with much danger and disadvantage to the public interest.

I scarcely think that the tax-payers of to-day are in the mood to endorse any such rendering of the law, while I am satisfied that no such retrograde movement comes strictly under the head of Reform.

While the Auditor's interpretation of the law was entirely different from that of his advisers, it was a difficult matter to always know what his duties were, and this fact placed him between two fires, the Audit Act on the one side and the Attorney-General on the other. As it was impossible to obey both, accounts have been audited in many cases, although they seemed irregular; but always under protest.

I deem it but just and right that the Minister at the head of any department should have control over all appropriations allotted to him, with full power to expend the same for all legitimate purposes, but that each voucher should clearly express what the expense is chargeable to, should be approved by the Minister and then by the Auditor, and should accompany the draft to the Treasury, so that the Registrar of Public Accounts can be assured that it has received the Auditor's approval, without which he is not authorized to pay any money except as provided for in Section 19 of the Audit Act.

I cannot gather from the said Act anything that leads me to construe it to mean that transfers of any description from one to another appropriation are in order.

Under the head of transfers I have classed the following payments :

“ Claims vs. the ‘ Kaimiloa,’ ” charged to purchase of a new Government steam vessel.

“ Claims vs. Lighting the city of Honolulu with Electric Light,” charged to “ Lighting the Streets of the Kingdom.”

“ Claims vs. Water Pipes for Kalaupapa,” charged to “ Leper Settlement.”

In connection with the last mentioned case, some other points have arisen which, perhaps, require some explanation.

The greater portion of the money drawn for the labor for laying this pipe was drawn direct from the Treasury, some few vouchers being presented and audited in regular form, but on the 31st of March vouchers amounting to several thousand dollars were withdrawn from the Auditor's office without being approved, and the balance of the appropriation immediately withdrawn from the Treasury and expended.

When these vouchers were presented to me afterward for approval, I declined to approve them, on the ground that they could just as well have been approved before payment, as the law directs, as not.

The work on this pipe has continued, although the appropriation, as before stated, is all expended, the expense incurred since, or some portion thereof, being charged to “ Leper Settlement,” although I have not

succeeded, from the vouchers, in distinguishing just how much.

I declined to audit G. W. Macfarlane & Co.'s bill for balance of material for "Water Pipe of Kalaupapa" and made chargeable to Leper Settlement, as this also did not seem to be in order, and on the 28th day of April began a short correspondence with his Excellency the Minister of the Interior (Appendix B), which resulted in an interview with his Excellency, during which I agreed, at his suggestion, to submit the question under discussion to the Supreme Court, he agreeing to submit a statement of the facts first to me for approval. He, not having as yet done so, has, I presume, altered his mind, and I must therefore respectfully ask your Honorable Body to take this question also under consideration.

Being uncertain as to the Auditor's duty under the Audit Act in connection with the new Road Board law, on March 21, I addressed a letter to his Excellency the Attorney-General, from whose reply (Appendix C) can be gathered the opinion that while in all probability it never was intended that the Chairman of the Road Board should in any way be trammelled in drawing the road tax from the Treasury, the fact that there was an Audit Act which expressly forbids the drawing of revenue except as therein provided seems to have been quite overlooked, and as on this score the two laws are entirely opposed to each other, the old law is made subservient to the new and the Auditor's duties dispensed with, he not being called upon to audit these accounts before or after the money is drawn.

The present Auditor most respectfully declines the alternative as suggested by his Excellency—"that an

investigation of the accounts might be useful," etc., whether audited or not, as in his opinion it is the Auditor's duty to audit all such accounts *as are in order only* or not at all, consequently the Audit Act has another obstacle in its way to further impede its usefulness.

Section 3 of this Road Board law says that the Road Board shall have entire charge and control of all roads, bridges and public highways within their respective districts, and shall expend the road taxes and moneys appropriated, etc.

Now, if Section 8 can be construed into an Appropriation Act, the setting aside of such road taxes as were in the Treasury as a special deposit from which to draw during the interim may have been quite in order; but this is not by any means the opinion of all.

I have interpreted Section 9 of the Audit Act, among other instructions to mean that, to be duly in order, every account should be signed by some Minister, and His Excellency the Attorney-General so states in his written opinion of February 8th; but His Excellency the Minister of the Interior has ruled differently, and has delegated the power to approve vouchers to one or more in each bureau under his department, a list of whom is on file in the Auditor's office, and upon their approval mostly the Auditor has to be guided. I must say that this is not, to my mind, strictly in order. I rather think that, in granting to a Minister control over all appropriations under his department, it was intended that, as far as possible, he should personally be cognizant of all such outlay, which would call for a close examination of all vouchers, if nothing else, whether for outlay made under his direct knowledge or not; and

the fact that the party who incurred the expense may be the only one familiar therewith, or know anything about it, should not deter His Excellency from approving all vouchers by affixing his own signature thereto before they are presented to the Auditor, and thus acknowledge his responsibility instead of shifting this duty into the hands of a dozen, more or less, others who are under his department; and if a Minister of the Crown can thus easily unburden himself of his duties now, what might be expected from him under a reign of absolute Ministerial responsibility?

Some time shortly after the arrival of the last Portuguese immigrant ship, the *Thomas Bell*, His Excellency the Minister of Finance stated that the expense attending these immigrants was due to Macfarlane & Co., and should be paid; that no provision was made for the same in the Appropriation Act of 1886, but that he thought the claim could be paid under Section 11 of the Audit Act to which I offered no objection, as it seemed proper, providing that the account was first adjusted to the satisfaction of all.

Subsequent inquiries, however, led me to change my mind, and the Cabinet appear to have done likewise, for no amount is entered as having been drawn from the Treasury on the above account, and I can but surmise that the amount paid to G. W. Macfarlane & Co. on account (\$5,500) was derived from other sources, and was, perhaps, a portion of the receipts paid into the Board of Immigration by the planters on account of Portuguese laborers shipped by them, and turned over as above, instead of being paid into the Treasury, as the law demands; and although the Ministers can probably find numerous precedents for this style of handling

public revenue in times past, it is hardly looked for, nor in accord with the professed principles of the great Reform movement, and the plea that if this money had once been paid into the Treasury they could not draw it out again in no way condones a violation of the law, if it be one, for if the Minister of the Crown can at will over-ride the law, what can be expected from other sources where money is being collected for the people, but that this example from headquarters will find plenty of followers.

While the payment of claim on account of Portuguese Immigrants was still pending, His Excellency the Minister of Foreign Affairs took the benefit of the doubt, and under this Section 11 of the Audit Act drew \$155 94 against the appropriation of "Expense of Hawaiian Youths Abroad," having first, in accordance with that Section, deposited a copy of the agreement entered into prior to the end of the period, but just why it was right to pay this claim and not that of the other I am unable to answer.

His Excellency the Minister of Foreign Affairs has also drawn from the Treasury since the end of the period, in two amounts, the sum of one hundred dollars as pay to janitors of armories, ruling that such expense could be paid under Section 3 of the Appropriation Act of 1886, which provides for the compensation of "soldiers and constables," and by a simple train of reasoning concludes that as janitors are perhaps volunteers, they may be soldiers or constables, and are therefore provided for as above; but makes the expense chargeable to "Aid to Volunteer Military Companies," which is not included under the above provision at all.

Annexed hereto will be found a copy of a letter

(Appendix D) from the Auditor-General to his Excellency the Minister of Finance, which is self-explanatory, and to which no answer has been received, although the Auditor has been shown a lengthy written opinion by His Excellency the Attorney-General on the question therein raised, all of which was doubtless required to convince himself and the balance of the Cabinet that they could draw any salary for the present, under any existing law, although, naturally the salaries were drawn.

It has just been intimated to me by His Excellency the Minister of Finance, that as a result of a Cabinet meeting it was his intention in his report to the Legislature to suggest that it might be well to abolish the Audit Office entirely, and make the Ministers alone responsible, on the grounds :

First, that under the present administration the law blocks the machinery of the Government ;

Second, that although amendments to the law had been under consideration for some time the difficulties which appeared in the way were too numerous to overcome ;

Third, that it would be an economy ; and

Fourth, that the Cabinet under the present Constitution should have full control of all revenue.

This precisely agrees with the opinion I, myself, had formed long ago as what the Ministers desired, but I certainly do not consider it advisable to give them so much power.

That the reasons given for this desired change are by any means the correct ones, I much doubt, for although His Excellency the Minister of Finance seemed desirous to impress me with the idea that there was nothing per-

sonal in the movement, the fact that, if the Ministers succeed, it will cost me my position makes it personal enough so far as I am concerned.

The only fault, I think, that they can find with me is that I have endeavored faithfully and consistently to carry out the law, and in so doing have to a certain extent interfered with payments on account of certain much favored schemes of the Ministers, but which did not, as far as I know, ever block any machinery of the Government, but simply delayed such payments the vouchers for which were either not in order or the appropriation to which they were made chargeable not the proper one or invariably for good and sound reasons.

If there are vouchers for many thousands of dollars in existence for work on Kalaupapa which I have declined to approve because the appropriation was long since expended; notwithstanding that his Excellency the Minister of Interior has declared that it was proper to make the outlay chargeable to Leper Settlement, an entirely different appropriation, which I cannot and do not admit, this fact should not, I think, operate against me, for I honestly think that I am right in the construction of the law.

The simple fact that I have differed with their Excellencies in several transactions which I thought were not in order has probably influenced the Cabinet against me, and I am only too glad to have the opportunity close at hand when the merits of the various questions which have arisen between them and me can be once for all settled, and I do not fear the result.

I think that your Honorable Body can scarcely have avoided learning from this report—although, I am

afraid, but imperfectly expressed—that the Audit Act is by no means so much at fault as is generally represented, but that the difficulty chiefly arises from the fact that since it first came into operation and up to the present it has been interpreted to suit those interested, except the Auditor-General, who now desires to obtain a ruling, if necessary, on the whole of the Act from the Supreme Court, as the only just method of arriving at a true interpretation thereof, and which would forever settle all such points as I have endeavored to illustrate in this report and still pending, and most effectually indicate wherein it may be defective, when the remedy can readily be applied.

To aid the Legislature in carrying out this request with as little trouble as possible, I will append to this report a brief recapitulation (Appendix E) of all such questions as should in my opinion be presented to the Supreme Court.

To thoroughly examine in detail the books and accounts in all the bureaus under this Government would call for much more time and labor than the detail, clerical and official requirements in the Auditor's office, as at present constituted, would permit. I have therefore not attempted to accomplish what could not consistently and honestly be done under the circumstances, having only visited and briefly examined the books of the Water Works, which appear well and carefully kept, the receipts as entered therein agreeing with their statement to me for two years from April 24th, 1886, to March 31st, 1888, in the sum of \$74,863 10, and which had been paid into the Interior Office, a large increase over any two former years.

I have also, in accordance with Section 10, Chapter

46 of the laws of 1884, visited the "Postal Savings Bank" and duly reported thereon to His Excellency the Minister of the Interior; the management of this branch, the Postal Money Order system and the General Post Office is apparently good and giving general satisfaction, while the books and accounts are systematically and intelligibly kept.

It is not my intention, however, to give any extensive review of the statistics, which should and no doubt will appear in the reports from the several departments, and I will append hereto, (Appendix F.) a detailed statement of taxes for the years 1886 and 1887, with each island separate and in full, which I hope may prove interesting and useful, and will not appear in any other report. The statements in each year are made to March 31st, the end of the period, and all balances unpaid at that time, if collected afterwards, are passed into the Treasury as Government Realizations.

GOD SAVE THE KING !

GEO. J. ROSS,
Auditor-General.

APPENDIX A.

Letter from His Excellency the Attorney-General to the Auditor-General.

ATTORNEY-GENERAL'S OFFICE, HONOLULU, H. I.,
February 8th, 1888.

GEORGE J. ROSS, Esq.,
Auditor-General.

SIR:—Your letter of February 6th is before me, wherein you ask for my written opinion concerning certain drafts recently drawn by this and the Interior Department in favor of Hon. A. S. Hartwell for professional services; also a draft in favor of Mr. Chas. Creighton for \$50 for services of a similar character.

Referring to our previous conversation on this subject, I would respectfully combat your proposition that no authority exists for the employment and payment of outside attorneys to assist in the necessary work of this, or any other department of the Government. Your assumption that because there is a Minister of the Crown set over the department in which the law matters of the government center, therefore, there is an implied prohibition upon the payment of other attorneys for service which the late Attorney-General cannot, or does not, attend to, is, I submit with much respect, entirely unsound.

The law pays the Minister of Foreign Affairs to conduct *his* department, but that does not imply a prohibi-

tion upon him against the employment of so much other extra clerical assistance as he may need to meet any emergencies.

You are, I consider, mistaken in the belief that any responsibility for the expenditures named in your letter, or for any kindred expenditures by a Minister, attaches to you because of your having audited such accounts. As I understand your position, there is no responsibility attaching to your approval of any account, beyond an obligation to see that the sum sought to be checked out is actually available in the appropriation to which it is assigned and that the purpose for which it is sought to be expended is not one for which any expense is actually forbidden.

There your responsibility ends.

As to the *policy* of the expenditure, the responsibility must and can rest only with the Minister who signs the draft. This is abundantly manifested from a reading of the first sentence of Section 8 of the Audit Act, which is as follows:

“Section 9. Every account shall be considered duly authorized that is in accordance with any existing law or regulation, or has been directly sanctioned by one or other of the responsible Ministers of the Crown, and covered by any Appropriation Act in force at the time of the payment.”

The position then is that I have certain amounts at my disposal, placed there by the Legislature, for certain purposes, with the exception that the “Incidentals” are placed absolutely at my discretion, to meet any expenses of my department not otherwise provided for.

If I should check out the whole amount available

under that appropriation for any one purpose not expressly forbidden by law, you would have no right to withhold your sanction of such expenditure merely because you doubted the policy or the expediency ; or, if you please, even the honesty of the consideration for which such expenditure professed to have been incurred. It might be in one fee to one outside lawyer. You might think me unwise or dishonest in thus spending the Government money ; but for such unwisdom or dishonesty my sole responsibility would be to the Legislature. For you to refuse to audit such an account would be to entirely exceed your powers in the premises. Your full and ample protection for having audited it would be the signature showing its approval by a responsible Minister, and the fact that, when audited, the sum named in such check was available to the credit of such appropriation.

I trust this expression of my views upon this subject may prove satisfactory to you, and would extend the assurance of my appreciation of not only the high sense of duty, but also of the friendly interest in the correctness of the position of Ministers in thus disbursing the people's money, which prompted your inquiries in this behalf.

I am, Sir, your obedient servant,

(Signed)

C. W. ASHFORD,

Attorney-General.

APPENDIX B.

Letter from the Auditor-General to His Excellency the Minister of the Interior :

OFFICE AUDITOR-GENERAL,

HONOLULU, April 28, 1888.

HIS EXCELLENCY L. A. THURSTON,

Minister of the Interior:

SIR :—Being satisfied that a number of vouchers lately audited by me, and, apparently chargeable to “Leper Settlement,” were really claims against Water Pipes of Kalaupapa, which appropriation was expended some time since, as no doubt Your Excellency is aware, I consider it my duty to call your attention to the matter; and furthermore, to also inform Your Excellency that for the future I must decline to approve, if presented to me, all vouchers such as above, or in connection with any other transfer, if identified by me as such.

I have the honor to remain,
Your Excellency's most obedient servant,
(Signed) GEORGE J. ROSS,
Auditor-General.

Letter from His Excellency the Minister of the Interior to the Auditor-General :

DEPARTMENT OF INTERIOR,

HONOLULU, H. I., May 2, 1888.

GEORGE J. ROSS, Esq.,

Auditor-General:

SIR :—I have the honor to acknowledge the receipt of your communication of April 28th, in re bills charged to Leper Settlement, which you think should have been charged to “Water Pipes of Kalaupapa,” and which you speak as a transfer.

I regret that you should have felt obliged to officially characterize a transaction as a "transfer," which is forbidden by law, without first asking me for an explanation, which I would have gladly given you

I think that you cannot be fully informed of the facts in connection with the matter, and therefore take the liberty of stating them.

The "Leper Settlement" consists of three districts, one of which is Kalaupapa. The latter district has no adequate water supply. For the purpose of furnishing water to lepers in this portion of the Settlement, in addition to the item for general expenses of the Settlement, an item was inserted in the Appropriation Bill for this particular expense, viz., "Water pipes for Kalaupapa." The only possible reason for separating it was to indicate first, that it was the desire of the Legislature that such work should be done; and second, that the money mentioned in the item "Water pipes for Kalaupapa" should not be spent for any other expense of the Settlement, but confined to the expense of obtaining water alone. The fact that the Legislature has, by the terms of the Appropriation Bill, set apart \$15,000 for "Water pipes for Kalaupapa" prevents any of that money from being spent for any other purpose, but it does not prevent the expenditure of funds from a general appropriation covering among other objects that individual item.

An example of this is an appropriation of \$1,000 for a wharf at Waimea, Kauai, and in addition thereto a general appropriation of \$15,000 for wharves throughout the Kingdom. There is no question that the \$1,000 must be spent on the Waimea wharf and on nothing else. There is equally no question that the

whole or any part of the \$15,000 can be spent on the same item. The proportion of the \$15,000 which should be spent on a particular wharf is a matter of discretion with the Minister of Interior, and the Auditor-General would have no right to refuse and audit a bill so long as the items included therein were legitimately chargeable to wharves.

In this case, what particular items of expense at the Leper Settlement are most necessary, whether poi, wood or water is a matter of discretion with the Minister, and so long as a particular bill is for a legitimate expense of the Leper Settlement the Auditor-General incurs no responsibility in auditing it, and has no right to refuse so to do.

I claim that the introduction of water to Kalaupapa is as necessary an expense of the Leper Settlement as supplying the lepers with poi, and the fact that during the last period there was a certain sum devoted to that purpose, which was all used during such period does not make it any less a legitimate expense, or prevent the use of the general expense fund for carrying the work on.

Believing that had the foregoing facts been before you, you would have arrived at a different conclusion, I respectfully request that you will reconsider the intention expressed in your letter and audit such accounts as may be presented for the purpose above mentioned.

I have the honor to be

Your most obedient servant,

(Signed :)

L. A. THURSTON,
Minister of the Interior.

Letter from the Auditor-General to His Excellency
the Minister of the Interior :

OFFICE OF THE AUDITOR-GENERAL,

HONOLULU, May 4, 1888.

HIS EXCELLENCY L. A. THURSTON,

Minister of the Interior :

SIR :—I have the honor to acknowledge the receipt of Your Excellency's communication of May 2d, the contents of which have had careful attention, without, however my gathering any new features therefrom, or differing materially from those recently presented to me by His Excellency the Attorney-General and which have already received due consideration.

Apparently Your Excellency has been at considerable pains to enlighten me on the intent of the law, and determine my duties in accordance therewith. In both instances you have signally failed, as I am quite unable and unwilling to see these matters through your glasses ; and I must also remind Your Excellency that, so far as the performance of the official duties connected with the Audit office are concerned, I am responsible to the Legislative Assembly alone ; and if I have failed therein and allowed both Your Excellency and the Attorney-General to over-rule me in the performance of my duty, I do not propose to try and shirk any responsibility that may possibly attach to me. I consider it my duty, in reporting to the Legislative Assembly, to bring to their notice, mainly, the workings of the Audit Law, and matters relating thereto generally ; the illustrations of how and why the law has been disregarded are plentiful and prominent, while the case which started this discussion is the only one where I have deemed it right to take a stand and test the question of your interpre-

tation of the law, and, if possible, to decide whether or no the Audit Act really intended that the Auditor should practically have no voice in its workings, and whose duties should be simply clerical and subservient to all, an interpretation which I decline to accept, while it has become, in my opinion, apparent, and I am well supported in this, that the power possessed by Ministers, particularly in connection with the Audit Act, should be much more clearly defined at an early date, and by such authority as cannot be appealed from.

While I regret the occasion that has brought up this discussion, I see no reason whatever for changing anything as expressed to Your Excellency in my former letter.

I have the honor to remain,
Your Excellency's most obedient servant,
(Signed) GEORGE J. ROSS,
Auditor-General.

APPENDIX C.

Letter from His Excellency the Attorney-General to the Auditor-General :

ATTORNEY-GENERAL'S OFFICE,
HONOLULU, H. I., March 27, 1888.

GEORGE J. ROSS, Esq.,

Auditor-General:

SIR :—I have received your letter of the 21st instant wherein you request my opinion in answer to the following questions, viz. :

First. Do you consider that Section 2 of the Appropriation Act of 1886 dispenses with my services until a new appropriation is passed, and that the payments

provided for in Section 3 of said Act do not require to be audited ?

Second. Does the contemplated transfer of road taxes at present in the Treasury to the credit of Hawaiian revenue account, and which it is desirable to so place before the end of the period as to be available for carrying on road work until such time as there is a new appropriation, require or not my approval ?

Third. Do you consider it consistent with the duties of the Auditor to audit accounts at any time after the money has been expended ?

In reply to the first of the above, I would state it as my opinion that Section 2, referred to, has reference solely to unexpended appropriations of the period of 1884-1886, which, according to the terms of said Section, are now, and have been since March 31, 1886, unavailable for use—or, in other words, they lapsed on March 31, 1886.

It is further my opinion that any payments hereafter to be made under Section 3 of the said Act, prior to new appropriation being voted, are subject in all respects to the provisions of the Audit Act, the same as though such payments should be made during the current biennial period. Section 3 is intended, I think, merely as a limited authority to continue paying certain expenses of the Government until a certain date after the close of the present biennial period, without the formality of obtaining new appropriations for such payments.

In answer to your second inquiry, it is my opinion that Section 8 of the Road Law (Chapter IX, Laws of 1887) removes and excepts all expenditures of the money deposited in the Treasury to the special credit

of the Road Boards—*i. e.*, the road taxes—from the operation of the proviso of Section 19 of the Audit Act (p. 674, Comp. Laws), which says: "No such payments shall be made by the Minister of Finance or by his authority, except sums voted for the civil list, permanent settlements and salaries, unless the several accounts therefor shall have been previously countersigned by the Auditor-General."

It is clear to my mind that the Legislature did not intend to subject the Road Boards to the necessity of securing the Auditor-General's approval of all contemplated expenditures by them before they could be permitted to withdraw from the Treasury money to make such expenditures. In the districts remote from Honolulu it may be and generally is of the highest importance to the proper conduct of public improvements that those having them in charge should also have ready cash to pay laborers and discharge other obligations which are constantly arising. If it were necessary for the laborers to wait for their day's or week's wages until the Road Board could transmit their pay-roll to the Auditor-General as a means of securing money to pay the same, it must be apparent to everyone that the difficulty of obtaining labor for such enterprises would soon become an impossibility. When the Legislature provided for making the road taxes special deposits, payable only upon the order of the Chairman of the respective Road Boards, and exacted bonds from each Chairman for the faithful disposition of such funds, it surely intended that they should have unrestricted access to such funds, and that the bonds filed by them should be considered as a substitute for the check upon unauthorized expenditures, otherwise furnished by the

provisions calling for an audit of the accounts, prior to their being paid. It is therefore my conclusion that the countersignature of the Auditor-General is not required as an authority to the Minister of Finance to pay the drafts drawn by the Chairman of such Boards against road taxes to the credit of their respective districts.

Your third inquiry presents a matter rather of general policy than of a legal requirement in a given case. While the according or withholding of your official approbation of a given expenditure, after the money therefor has left the Treasury, cannot well affect the *status* of the particular appropriation from which the supposed expenditure has been made, still such investigation of the accounts and vouchers involved as appertains to your office might be very useful, if not essential to a correct understanding of the attendant transactions. Thus, in regard to the expenditures of a particular Road Board, while such investigation, after payment by the Treasury of the amounts involved, would not save the "special deposit" from the effects of past abuse or dishonesty, it might well reveal facts and circumstances tending to fix the liability of the Chairman thereof upon his bond. To that extent or in any similar instance it would be useful, and therefore practical and commendable.

Hoping that the above treatment of your inquiries will be found of service to you,

I have the honor to remain

Your obedient servant,

(Signed)

C. W. ASHFORD,

Attorney-General.

APPENDIX D.

Letter from the Auditor-General to his Excellency
the Minister of Finance :

OFFICE AUDITOR-GENERAL,
HONOLULU, April 26, 1888.

HIS EXCELLENCY W. L. GREEN,
Minister of Finance:

SIR :—My attention having been drawn to the following subject, I think it advisable to bring it before your Excellency immediately.

Section 3 of the Appropriation Act of 1886, among other provisions, provides for the payment of salaries, civil list and permanent settlements, etc., until the 30th of June, 1888, etc., etc.; but the Act of the extra session of 1887, while reducing certain salaries, etc., etc., provides for the payment thereof up to the 31st day of March only. From what source does your Excellency propose to draw salaries for the term between that date and the passage of a new Appropriation Bill ?

I have the honor to remain

Your Excellency's

Most obedient servant,

(Signed)

GEORGE J. ROSS,
Auditor-General.

APPENDIX E.

RECAPITULATION OF DECISIONS REQUIRED IN THE AUDIT ACT.

First. Should not *all receipts* of Hawaiian revenue from every source be paid into the Treasury direct ?

Second. Should not *all vouchers* show a Minister's approval before being audited, and is any Minister authorized to depute one or more from each bureau to approve for him ?

Third. Should not *all vouchers* be first approved by the Auditor before the money for the same has been drawn from the Treasury, except as provided for in Section 19 ?

Fourth. It has been customary to draw on the Treasury direct for running expenses of public works and branches of Board of Health, etc., and it is claimed that no other system is practicable. Is not this directly in violation of the law, and would you advise that the law be made to cover all such cases in the country districts, where it may be imperative that money must be had in advance of vouchers, and under such circumstances would it be quite consistent to audit these vouchers when afterwards at any time they may be presented ?

Fifth. Does not this Act intend that such vouchers, having the Auditor's approval, should accompany the draft of the Treasury, so that the Registrar of Public Accounts may assure himself that they have been duly audited ?

Sixth. Is there any clause in this Act which authorizes transfers of any nature by charging to any one appropriation expenses incurred on account of any

other one, and does not clause 4 of the Appropriation Act of 1886 forbid any such ?

Seventh. Do you construe any part of the Audit Act to provide that any Minister of the Crown may legally expend all money or any money in an appropriation for any purpose not forbidden by law ?

Eighth. Do you consider that any voucher presented to the Auditor for approval is in order unless on its face it is clearly set forth, and by competent authority, just what the expense is chargeable to ?

